

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 01**

**STARBUCKS CORPORATION**

**Employer**

**and**

**WORKERS UNITED**

**Petitioner**

**Cases 01-RC-290847  
01-RC-290850  
01-RC-290851**

**DECISION AND DIRECTION OF ELECTIONS<sup>1</sup>**

Starbucks Corporation (the Employer) operates a chain of coffee shops with locations throughout the world. Workers United (the Petitioner) has filed three petitions seeking to represent three separate bargaining units at three different stores.<sup>2</sup>

In Case 01-RC-290847, the Petitioner seeks to represent the following unit of approximately 19 employees at the “Newtonville Store”:

All full-time and regular part-time baristas, shift managers, and assistant store managers performing work at the Employer’s store #7384 located at 16-18 Austin St., Newtonville, MA 02460, excluding all store managers, office clericals, guards, and supervisors as defined in the Act.

In Case 01-RC-290850, the Petitioner seeks to represent the following unit of approximately 14 employees at the “Boston Store”:

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<sup>1</sup> The petitions in these cases were filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petitions at a videoconference hearing held on March 14-16, 2022, before a hearing officer of the National Labor Relations Board (the Board). The parties were given an opportunity to file post-hearing briefs, and both parties did so. I have the authority to hear and decide these matters on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer’s rulings are free from prejudicial error and therefore affirm them. I find further that the Petitioner is a labor organization within the meaning of the Act; that there is no contract bar or other bar to election in this matter; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

<sup>2</sup> I have already issued two Decisions and Directions of Elections in six other cases involving these parties. See *Starbucks Corp. (Boston I)*, Case Nos. 01-RC-287618 and 01-RC-287639 (Mar. 3, 2022); *Starbucks Corp. (Boston II)*, Case Nos. 01-RC-289055, 01-RC-289077, 01-RC-289330, and 01-RC-289350 (Mar. 25, 2022). Other cases involving these parties remain pending in the Region.

Starbucks Corporation  
Cases 01-RC-290847  
01-RC-290850  
01-RC-290851

All full-time and regular part-time baristas, shift managers, and assistant store managers performing work at the Employer's store #10599 located at 125 Summer St., Boston, MA 02111, excluding all store managers, office clericals, guards, and supervisors as defined in the Act.

In Case 01-RC-290851, the Petitioner seeks to represent the following unit of approximately 30 employees at the "Cambridge Store":

All full-time and regular part-time baristas, shift managers, and assistant store managers performing work at the Employer's store #8742 located at 120 Broadway, Cambridge, MA 02142, excluding all store managers, office clericals, guards, and supervisors as defined in the Act.

The Employer takes the position that shift managers and assistant store managers at all petitioned-for stores are supervisors within the meaning of Section 2(11) of the Act.<sup>3</sup> I have deferred litigation of whether assistant store managers are supervisors until after the election because the issue relates to the eligibility of a portion of the unit(s) involved, which does not significantly impact the size or character of the unit(s).

The Employer also contends that the smallest appropriate unit for the Boston Store is a multi-facility unit consisting of all stores in the Employer's District 750, which would include approximately 138 employees at 10 stores.<sup>4</sup> The Employer does not contend that the Newtonville and Cambridge Stores should also be included in district-wide units.

Having considered the parties' positions, the evidence, and the entire record,<sup>5</sup> I find that the Boston Store is an appropriate single-facility unit. I further find that the Employer has not met its burden of demonstrating the supervisory status of the shift managers at the Boston Store or the

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<sup>3</sup> At the time of the hearing, the Cambridge Store had one assistant store manager and four shift managers, while the Newtonville and Boston Stores each had three shift managers.

<sup>4</sup> In addition to the Boston Store, District 750 consists of the following facilities: Store #28796 (749 E Broadway, South Boston, MA 02127); Store #7805 (One International Place, Boston, MA 02110); Store #7377 (One Financial Center-Dewey Sq., Boston, MA 02111); Store #23738 (103 Seaport Blvd., Boston, MA 02210); Store #18666 (30 Rows Wharf, Boston, MA 02110); Store #22566 (48A Northern Ave., Boston, MA 02210); Store #16764 (11 W. Broadway, South Boston, MA 02127); Store #7201 (211 Congress St., Boston, MA 02110); and Store #869 (75-101 Federal St., Boston, MA 02110).

<sup>5</sup> The parties have stipulated that witness testimony and exhibits from *Boston I* and *Boston II* are incorporated by reference into the record for each of the above-captioned cases. The parties have also stipulated that certain witness testimony and exhibits from *Starbucks Corp. (Buffalo I)*, Case Nos. 03-RC-282115, 03-RC-282127, and 03-RC-282139, *Starbucks Corp. (Buffalo II)*, Case Nos. 03-RC-285929, 03-RC-285986, and 03-RC-285989, *Starbucks Corp. (Mesa I)*, Case No. 28-RC-286556, *Starbucks Corp. (Knoxville)*, Case No. 10-RC-288098, and *Starbucks Corp. (Mesa II)*, Case No. 28-RC-289033, are incorporated by reference to the extent described in General Counsel's Exhibit 2.

Cambridge Store. However, I find that the Employer has met its burden of demonstrating the supervisory status of shift managers at the Newtonville Store. Accordingly, I am directing elections in the three appropriate units.

The other matter before me is the method of election. The Employer asserts that manual elections are appropriate, while the Petitioner prefers mail ballot elections. As set forth below, I am directing mail ballot elections due to the present state of the Covid-19 pandemic.

## **FACTS**<sup>6</sup>

### **The Single Facility Presumption**

- **The Employer's Operations and Management Structure**

From its headquarters in Seattle, Washington, the Employer operates a worldwide chain of coffee shops serving food and a variety of beverages, including specialty, made-to-order coffee drinks. In the United States alone, the Employer owns and operates over 9,000 locations. Nationwide retail operations are organized into twelve regions overseen by regional vice presidents. Regions are divided into areas headed by regional directors who report to the regional vice president. Areas are further divided into districts led by district managers who report to the regional director.<sup>7</sup> Each district contains a varying number of stores.<sup>8</sup> Within a district, each store is run by a store manager (sometimes with an assistant store manager) who reports to the district manager. The rest of the store staff consists of baristas, who prepare food and beverages and handle cleaning duties, and shift supervisors, who perform the same tasks as baristas with some additional responsibilities.<sup>9</sup>

The Employer expects every store to provide what it calls the "Starbucks experience" by offering customers the same products in a consistent environment nationwide. Decisions about store openings or closings, store design, equipment placement, marketing and promotions, store budgets, opening hours, and contracts with vendors and contractors are made at the district level

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<sup>6</sup> The parties refer to baristas, barista trainers, and shift managers as "partners," in accordance with the Employer's internal nomenclature. Unless otherwise specified, this decision refers to them as "employees" to maintain consistency with the language of the Act and Board precedent.

<sup>7</sup> The Newtonville Store is in District 854, the Cambridge Store is part of District 855, and the Boston Store belongs to District 750. All stores are part Area 72, which covers the greater Boston area.

<sup>8</sup> The Employer periodically realigns districts to balance administrative burdens. District Manager Lorena Nunez testified that District 750 used to have 12 stores, but 4 of them closed due to Covid, and 2 others were added from a neighboring district.

<sup>9</sup> As discussed further below, in Massachusetts the Employer has replaced shift supervisors with shift managers, whose responsibilities are somewhat different. Unless otherwise specified, this Decision and Direction of Election refers only to shift managers.

or above. Pricing is uniform across stores. Every store is required to follow detailed operational plans devised at the corporate level, which aim to ensure a uniform customer experience at every location. Several times a year, the Employer issues a guide called *Siren's Eye* that prescribes the precise location of all products and merchandising stores, down to such granular details as the placement of individual food items in display cases. Store managers and shift managers must ensure that *Siren's Eye's* instructions are followed to the letter.

The Employer also maintains various operational tools administered at the corporate level to assist stores with inventory management, scheduling, store operations, and consistency in the application of human-resources policies. For example, the Employer's Inventory Management System (IMS) automatically replenishes all packaged foods, packaged coffee, merchandise, gift cards, as well as certain food and beverage items based on store inventory, past trends, and sales forecasts, without any input from store staff. For products not covered by automatic shipments, the IMS suggests default quantities, or "pars," which can be adjusted as needed. The Employer also maintains a Mobile Order & Pay (MOP) app, which allows customers to place orders on their phones ahead of time and pick them up from the store.<sup>10</sup>

Technology also facilitates staff hiring and management. The Employer maintains a centralized online hiring platform called Taleo, where candidates fill out the same application regardless of the store(s) where they wish to work, and which processes background checks for new employees. The Employer also maintains a Partner Planning tool, which generates a three-month forecast of the staffing level each store will need to meet consumer demand. The Employer's Partner Hours tool uses employee-availability data and business forecasts to generate a weekly schedule that estimates, in 15-minute increments, the number of staff needed to meet demand on any given day. The Play Builder tool uses daily projections of customer flow to suggest where to position employees in the store at any given time. Finally, the Employer's Virtual Coach tool offers guidance on the appropriate disciplinary action to take if employees violate the Employer's rules and policies.

All employees nationwide are subject to the same policies, including those found in the Employer's *Partner Guide*. All employees also receive the same wages and benefits, which are determined by the Employer's corporate office. Benefits include medical coverage, disability coverage, life insurance, parental leave, free access to a meditation app, free coffee and food while working, Deferred Action for Childhood Arrivals (DACA) filing fees, and bachelor's degrees through Arizona State University.

The Employer's policies instruct employees to refer questions and concerns first to shift managers or to the store manager. If they are uncomfortable doing so, or if the response they are given is inadequate, employees can contact the district manager, the regional director, or the partner resources manager for that area. They can also call the Employer's Partner Contact Center

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<sup>10</sup> The three petitioned-for stores take orders in person or by MOP; they do not offer drive-thru service.

hotline, which handles all employee questions and complaints, including on issues such as harassment, discrimination, or retaliation.

- Control Over Daily Operations and Labor Relations<sup>11</sup>

The Employer's official employment materials assign separate responsibilities to district managers and to store managers. According to their job description, district managers spend most of their time "staffing, coaching, developing and managing the performance of store managers," and generally overseeing district-wide operations. By contrast, the store managers' job description states that they spend the majority of their time "supervising and directing the workforce, making staffing decisions (i.e., hiring, training, evaluating, disciplining, discharging, staffing and scheduling)," and generally managing store operations. The Employer's *Partner Guide* also states that store managers are "responsible for personnel decisions, scheduling, payroll and fiscal decisions."

Once a week, District Manager Lorena Nunez holds a call with District 750 store managers and assistant store managers, or a shift manager if both are absent. Nunez also hosts a monthly Partner Planning Meeting with store managers to share the Partner Planning tool's workforce projections and discuss proper staffing levels. About seven times a year, Nunez organizes a Period Planning Meeting with store managers to convey information about new programs and promotions, ensure that they understand expectations, and verify that policies and procedures are applied consistently across the district. Those meetings are followed by in-person visits to each store. Nunez also conducts biweekly "observe and coach visits" in each store. Interactions between district managers and store employees are generally limited to greetings and casual conversation.

Store managers work 40 hours per week, 8 hours per day. They spend about half of their time serving customers, and the other half attending to administrative matters such as performing inventories, placing orders, and handling employee-related matters. Shift managers oversee operations in the store manager's absence. When the store manager takes a vacation, another District 750 store manager is designated as proxy in case of emergency. Store managers have no control over decisions to open, close, remodel, or relocate their stores, nor do they have any input into store layouts, equipment, products and supplies, pricing, wages and benefits, or the contents of the *Partner Guide*.

Individual store hours are set by the district manager in partnership with the store manager. Employee work schedules are prepared by the store manager or a shift manager. Any overtime requires the district manager's approval. Store managers or shift managers verify hours worked, approve time-off requests, communicate with employees on pay-related matters, and post weekly work schedules. Shift managers decide how to deploy employees among workstations, sometimes with the help of the Play Builder tool.

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<sup>11</sup> As noted above, the Employer does not challenge the single-facility presumption for the Newtonville and Cambridge Stores; accordingly, these facts apply only to the Boston Store.

District managers do not participate in hiring new employees; Nunez becomes involved in the hiring process only if a store manager wants to hire a former employee previously deemed unfit for rehire. New employee orientations are conducted by store managers or assistant store managers, occasionally with the help of a shift manager or a barista trainer. Store managers, shift managers, and barista trainers are responsible for training new employees. The Employer has developed standardized training protocols for each step, which must be followed to the letter.

District Manager Nunez and the area partner resources manager can together adjust the wages of store managers, assistant store managers, and shift managers based on experience, so long as they remain within employer guidelines. Store managers select employees for promotion, approve promotions, and inform employees that they have been promoted, without any involvement by the district manager.

Discipline is handled at the store level. Store managers and shift managers do not need a district manager's authorization to issue discipline, and there is no space on the Employer's corrective action forms for approval by a district manager. The forms themselves encourage employees to discuss concerns with the managers who issue the discipline. The Employer does not issue regular employee performance evaluations; all coaching and informal evaluations are handled by store managers and shift managers.

The Employer's ordering system is largely automated, as noted above. Many products and supplies are shipped without any store input. Stores file small daily orders for some products and larger weekly orders for others. The IMS suggests default amounts for each item, which can be adjusted by the store manager or a shift manager as they see fit.

Store maintenance is centralized at the district level. Stores submit maintenance requests to the area facilities manager, who consults with the district manager to set priorities.

- Employee Skills, Functions, and Working Conditions

Once fully trained, employees have the same skill set and perform the same functions, regardless of where they are located.<sup>12</sup> They perform the same tasks, such as preparing drinks and cleaning stores, and sell the same products to customers. As noted above, they receive the same wages and benefits, which are determined by the Employer's corporate office. There is some small variation in working conditions between District 750 stores, as they have different operating hours and serve different clienteles.

- Employee Interchange

All employees are assigned a "home store," usually the one into which they were first hired. However, an employee can permanently transfer to another location, which becomes their new home store. The employee initiates the process by asking the receiving store if it has any openings.

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<sup>12</sup> The sole exception is that only drive-thru stores train employees for that position.

The employee then submits a transfer request form to their home store manager for signature, after which it goes to the district manager for approval. Typically, the home and receiving store managers discuss and agree to transfers amongst themselves, and the district manager's role is purely administrative.

Employees can also volunteer to work temporarily at another store. The Employer refers to employees working outside of their home stores as "borrowed employees" working "borrowed shifts." When they are first hired, employees sign a Partner Availability Form stating that they may be asked to work at other locations. However, borrowing is strictly voluntary, and there are no consequences for refusing to work a borrowed shift.

The Employer submitted two reports about employee borrowing in District 750 between April 29, 2019, and February 6, 2022, as well as the underlying raw data. The Employer also provided testimony by Abby Clay Turner, a principal at the consulting firm Charles River Associates who holds a Ph.D. in economics and public policy. The Employer highlights the following statistics from its datasets, which show that during the relevant period:

- 37.4 percent of District 750 employees and 74.1 percent of Boston Store employees worked at least one borrowed shift;
- Approximately 60 percent of employees that worked at the Boston Store were borrowed from other stores;
- Approximately 28.5 percent of store days in District 750 required at least one borrowed partner, and about 15 percent at the Boston Store;
- An average of 6.3 employees were borrowed each day in District 750; and
- All District 750 stores borrowed from, and lent employees to, other district stores, with no smaller clusters of stores sharing employees only amongst themselves.

The Employer also analyzed its data to control for disruptions caused by the Covid pandemic (by looking only at the period from April 29, 2019, until February 29, 2020), and for employees who transferred permanently to new home stores. Controlling for those factors, the data reflects similar patterns of employee borrowing among District 750 stores.

For its part, the Petitioner emphasizes that for the entire period covered by the Employer's data, District 750 had a total of 75,144 shifts, of which 2,074 (or 2.76 percent) were borrowed shifts performed by District 750 employees.<sup>13</sup> The only Boston Store employee who testified stated that borrowed employees work there "infrequently," and not on a weekly basis.

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<sup>13</sup> The numbers of shifts and borrowed shifts do not count borrowed shifts worked in District 750 by employees from other districts.

- Distance Between Locations

Eight of the 10 stores in District 750 are located in Boston, Massachusetts. The remaining two are in South Boston, Massachusetts. The distances between stores range from a tenth of a mile to 2 miles. Seven stores are located less than a mile from the Boston Store, with the two remaining stores 1.1 and 1.8 miles away.

- Bargaining History

The Employer has no bargaining history with any of the stores in District 750.

Supervisory Status of Shift Managers

- Creation of the Shift Manager Position

In 2012, the U.S. Court of Appeals for the First Circuit ruled in *Matamoros v. Starbucks Corp.*, 699 F.3d 129 (2012), that shift supervisors could not participate with baristas in tip pools based on tips left in counter-top jars. Subsequently, the Employer replaced the shift-supervisor classification in its Massachusetts stores with the new classification of shift manager. In *Boston II*, Strategy Manager Emily Shook testified that this change entailed creating a new job code, job title, pay range, and system access for employees redesignated as shift managers. She also testified that, while shift supervisors execute a plan set forth by store managers, shift managers actively participate in the store's operational leadership. The present chain of command—barista, shift manager, assistant store manager, store manager—is unique to Massachusetts; the Employer continues to employ shift supervisors elsewhere.

The Employer's written job description for shift managers states:

The shift manager provides guidance and oversight of store operations with direction from the store manager during his/her assigned shift. The majority of time is spent ensuring customer satisfaction and product quality. The incumbent is responsible for modeling and acting in accordance with Starbucks guiding principles.

The job description also defines the key responsibilities of shift managers to include communicating goals, demonstrating a calm demeanor, delivering customer service, implementing company plans, delegating appropriate responsibilities to other employees, coaching and directing other employees, identifying problems, and providing input to store managers about opportunities to achieve operational goals.

Shift managers are paid more than the former shift supervisors, and have been part of the Employer's Retail Management Incentive Plan (RMIP) since September 2021. RMIP members are eligible to receive bonuses, which are linked to the region's financial performance. Baristas are not included in the RMIP.



Shift managers attend weekly meetings with their store manager. They are given two non-coverage hours per week to perform administrative tasks; the rest of their time is spent serving customers.

Shift managers have email accounts, unlike baristas, and they have greater access to the Employer's electronic systems. For example, they have access to Decision Center, where the Employer stores financial information, including profit-and-loss statements, and Workplace, the Employer's internal social-media system. They also have enhanced access to the Employer's intranet, Partner Hub, where they can print corrective action forms.

Shift managers undergo training consisting of 24 hours of module-based learning and 18 hours of practice. Once fully trained, they are assigned one of four areas of specialization (also called "pillars" or "buckets"), each with its own set of responsibilities: Staffing and Scheduling (S&S); Teaching and Training (T&T); Sales and Inventory (S&I); and Ops Standards and Continuous Improvement (OS&CI). Their proficiency in a particular bucket is assessed in three levels: Learning, where they become familiar with software tools and receive training from the store manager; Owning, where they perform the work with occasional help from the store manager; and Advising, where they work independently and train others in that bucket.

Depending on the length of their tenure, shift managers can have varying levels of proficiency in multiple buckets; however, the record indicates that only one shift manager is assigned to a particular bucket at any given time. Moreover, the degree of independence that shift managers enjoy in performing their bucket assignments varies according to their proficiency level and the leeway given to them by their store manager. All bucket duties can also be handled by the store manager, an assistant store manager, or a store-manager trainee.

The S&S bucket covers payroll processing, scheduling, and staffing. Processing the weekly payroll entails reviewing employee timecards for accuracy, adding missing punches in the Partner Hours software,<sup>14</sup> approving availability changes and last-minute vacation, time-off, or sick-leave requests, verifying paid time-off allocations, and approving the final payroll. Scheduling and staffing duties are discussed in detail further below.

Shift managers assigned to the T&T bucket are responsible for conveying corporate communications to employees, ensuring that employees are trained for seasonal promotion periods, drafting training plans and scheduling trainings, and training barista trainers. Drafting training plans for new employees involves printing the training plan and filling in each block with the name of the trainer, and the date and time of the training. Trainings are scheduled based on employee availability, and must follow the Employer's detailed training protocols. At the Advising level, a shift manager will perform skill checks on new baristas during and after their training. If a trainee is struggling, the shift manager may allocate more time or provide extra support in certain

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<sup>14</sup> Missing punches occur when an employee forgets to punch in or out, or when the system is not working. In that case, the employee writes their start or finish time in the store's Daily Records Book, and the shift manager inputs those times into Partner Hours.

areas. Once the training is complete, the shift manager reports on how it went to the store manager. None of the petitioned-for stores had a shift manager working the T&T bucket at the Advising level at the time of the hearing.

The S&I bucket involves tracking weekly sales trends and food waste, setting par numbers in the IMS for individual products, adjusting quantities for the weekly order, auditing daily and weekly orders, and performing inventory counts. All shift managers are expected to handle some aspects of the S&I bucket as part of their day-to-day activities, such as placing the daily order, monitoring the IMS for delivery alerts, or addressing shortages by obtaining (or providing) products and supplies from (or to) other stores. At the Advising level, a shift manager can direct other employees to perform inventory, but they must review the employees' numbers before finalizing the count. At the time of the hearing, only the Newtonville Store had an Advising-level shift manager in the S&I bucket.

The responsibilities for the OS&CI bucket include cash management and till audits, assessing work-station cleanliness and documenting any equipment issues, auditing the weekly Clean Play (a set of deep-cleaning tasks performed once a week after closing), doing store-safety assessments, preparing for food-safety audits, and verifying compliance with work standards such as time and attendance, dress code, cell-phone use, and others. Shift managers prepare for food-safety audits by walking through the store and verifying compliance by checking items off a list. After the audit (which is done by an outside party), they are expected to correct violations, including by instructing other employees to perform certain tasks. The same applies to store-safety assessments. All shift managers perform some aspects of the OS&CI bucket as part of their daily activities, such as cash-handling operations (i.e., counting funds in the safe, putting the tills out before opening and away after closing, preparing funds for pick-up by a private security company) and verifying compliance with work standards. At the time of the hearing, none of the petitioned-for stores had an Advising-level OS&CI shift manager.

Shift managers rotate in each bucket for about six months. The Employer's witnesses provided different estimates of the time it takes to reach the Advising level in a given bucket, but all agreed that it depends on the individual. Newtonville Store Manager Laura Rixe testified that it takes 6 months to a year to reach Advising in the OS&CI bucket. Boston Store Manager Anthony Gentile testified that it takes about 6 months to reach Advising in any given bucket. Cambridge Store Manager Athena Keys testified that Owning the T&T bucket can take as little as 3 months, but did not know how long it would take to reach the Advising level. And in *Boston I*, District Manager Nancy Goedhart testified that not all shift managers reach Advising on their first rotation in a given bucket.

Neither party is willing to stipulate that shift managers share the same duties within stores or among stores. Accordingly, the supervisory status of shift managers must be evaluated separately on a store-by-store basis.

- Shift Managers' Role in Hiring

The shift managers' job description states that they should "lead with trust, honesty and commitment to hire, coach and develop partners to achieve their potential." The Employer's Shift Manager Training module states that they are "responsible for making hiring decisions and understanding how to use our applicant tracking system for hiring." At the same time, the store managers' job description states that they are responsible for "making staffing decisions (i.e., hiring...)." The Employer's *Partner Guide* also states that store managers are "responsible for personnel decisions."

It is undisputed that store managers enter new hires into the Employer's computer system and order background checks. In *Boston II*, Strategy Manager Shook testified that, while shift managers can conduct interviews, the Employer "would hope hiring decisions are made in consultation with the management team."

The staffing responsibilities of an Advising-level shift manager include checking Taleo for applications, contacting applicants and verifying their availability, scheduling interviews, conducting interviews in accordance with the Employer's *Barista Interview Guide*, and making hiring recommendations to the store manager, who makes the final decision.<sup>15</sup> If a candidate is hired, the store manager or the shift manager extends them a verbal job offer, contingent on passing a background check.

Newtonville Store Manager Laura Rixe testified that Shift Manager Brittanie Pricer, who works the S&S bucket at the Advising level, handles almost every step of the staffing process, short of actually hiring new employees. Pricer likewise testified that Rixe likes to be "kept in the loop" and is ultimately makes the final decision, but that Rixe has always accepted Pricer's recommendations. Pricer's and Rixe's testimonies reflect that Pricer interviews candidates alone, following the script from the *Barista Interview Guide* and adding a few questions of her own.<sup>16</sup> Afterward, Pricer discusses the interview with Rixe and recommends whether to hire the candidate. Pricer has recommended hiring over 10 applicants, all of whom Rixe hired without further interview. About 8 to 10 of those hires still work at the Newtonville Store. Store Manager Rixe usually makes the verbal offer to the applicant, but Pricer has done so in Rixe's absence. Rixe testified that she initially conducted interviews alongside Pricer, but because she and Pricer have worked together for so long "[Pricer] knows my expectations... just she knows."

Boston Store Manager Gentile testified that shift managers start by doing interviews with him before conducting them on their own. Gentile also testified that shift managers make hiring recommendations, which he follows. When asked for specific examples, Gentile recounted one instance where he observed Shift Manager Indigo Ryder interview an applicant and accepted

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<sup>15</sup> The hiring process formerly included prescreening questions during the initial contact with the candidate.

<sup>16</sup> Pricer does not interview every candidate; Rixe also conducts interviews depending on her availability.

Ryder's recommendation not to hire the candidate. On another occasion, Ryder interviewed a candidate in the presence of a store-manager trainee. Upon further questioning, Gentile testified that Ryder, who is at the Advising level in S&S, has never conducted an interview alone. Ryder corroborated that statement. Ryder testified that Gentile runs interviews according to the *Barista Interview Guide* and assigns them a few questions to ask. Ryder discusses the interview with Gentile afterwards, but does not make a formal hiring recommendation. Ryder testified that no other shift manager at the Boston Store participates in the hiring process.

Store Manager Athena Keys ran the Employer's Harvard Yard store until it closed in November 2021, at which point Keys transferred to the Cambridge Store. Keys testified that Shift Manager Zola Wolff handled hiring at the Harvard Yard Store, but has not done so at the Cambridge Store. Shift Manager Wolff, who has over 18 months' experience in the S&S bucket, interviewed candidates alone at the Harvard Yard store and recommended hiring at least five employees, whom Keys hired without further interview. Keys testified that a store-manager trainee did hiring at the Cambridge Store in January and February; at the time of the hearing, Keys, an assistant store manager and an "hourly recruiter" handled hiring. Keys expressed a hope that Wolff would return to hiring in "a month or two." Wolff did not testify at the hearing. Shift Manager Colleen Simmert testified that Wolff had not done hiring since moving to the Cambridge Store. Simmert testified that she only once observed another shift manager taking part in an interview at the Cambridge Store.

- Shift Managers' Role in Assignment and Responsible Direction

Shift managers in the S&S bucket are responsible for preparing the weekly schedule. As mentioned earlier, the Employer's Partner Hours tool uses sales and customer-flow data to estimate the number of employees needed to meet demand for every 15 minutes of every shift. Using a tool called Schedule Editor, the shift manager takes the previous week's schedule and superimposes Partner Hours' forecast for the coming week, together with the availabilities of every store employee. The goal is to reconcile employees' availabilities with Partner Hours' forecast to create a 100 percent match, without diverging from the store's labor budget by more than 2 percent. Shift managers usually aim for a 75-percent match. The system displays the matching percentage for each day as the schedule is built. Each block of time is color coded: green if the shift manager schedules the number of employees prescribed by Partner Hours, red otherwise. The system automatically schedules breaks every 2 hours. The shift manager designates time for trainings and non-coverage work, and the system tracks whether the store is over or under its weekly allotment of non-coverage hours. Boston Store Manager Gentile testified that the Partner Hours algorithm is not perfect and all-knowing, and that shift managers make adjustments based on their knowledge of customer flows and local events.

Each of the petitioned-for stores had a shift manager assigned to the S&S bucket at the time of the hearing. At the Newtonville Store, Store Manager Rixe testified that Shift Manager Pricer is close to Advising and prepares the schedule without supervision. Store Manager Gentile testified that the shift manager working the S&S bucket at the Boston Store is at the Owning level, but added that he requires shift managers to send him schedules for review. Shift Manager Ryder

corroborated that Gentile reviews and frequently edits weekly schedules. Cambridge Store Manager Keys testified that they always review the schedule before posting, even though the shift manager who prepares it is at the Advising level in S&S.

On any given shift, there is usually a shift manager designated as Play Caller, who deploys other employees to designated positions on the retail floor. The Employer's Play Builder tool, which is calibrated to each individual store, prescribes the number of stations to run and how many employees to place at each station depending on the time of day, the number of employees working, and the product mix.<sup>17</sup> The Employer has designed specific routines for each station, which Employees are trained to follow. In *Buffalo I*, employer witnesses testified that Play Callers are expected to follow Play Builder in deploying staff to their stations. Here, one shift manager testified to using Play Builder infrequently; another testified to looking at Play Builder once per shift. Both shift managers testified that they assign employees to positions where they are the strongest during peak times, then rotate them to other stations to avoid burnout.

Shift managers can offer employees the opportunity to leave early if business is slow or to stay late if the store is short-staffed, so long as this does cause them to accrue overtime.<sup>18</sup> In either case, employees are free to refuse. Shift managers can call other stores for help if business is heavier than expected and, if necessary, turn off the MOP system to reduce demand. They ensure that employees take breaks in accordance with applicable laws, usually at the times allotted by Partner Hours, and occasionally at other times if the store is too busy.

In general, the record reveals no evidence that shift managers are held accountable for, or have incurred adverse consequences as a result of the actions of other employees.

- Shift Managers' Role in Discipline

Store managers are the highest authority at store level and are ultimately responsible for discipline. The Employer's employment materials assign store managers the primary responsibility to make personnel decisions, including discipline and discharge. The Employer's *Shift Manager Approach*, a document intended to help shift managers perform their duties, states that "[w]hen necessary, [a shift manager] documents performance conversations using corrective action." The Employer's disciplinary policy includes documented (written) coachings, written

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<sup>17</sup> The product mix consists of the type and volume of products (espresso, cold beverages, food) sold at that time of day in that particular store, based on past sales trends. The product mix also factors whether orders are received in person or through the MOP app.

<sup>18</sup> Only district managers may authorize overtime.

warnings,<sup>19</sup> final written warnings, and termination.<sup>20</sup> In-the-moment verbal coachings often precede documented coachings, but do not become part of an employee's personnel file. It is undisputed that shift managers issue in-the-moment coachings.

Newtonville Store Manager Rixe testified that shift managers can issue written warnings, but that it has never been necessary for them to do so. Shift Manager Pricer testified that she often coaches baristas about store policies and sometimes makes them sign copies of those policies to prove that they are aware of them. She testified that she has never had occasion to issue a written warning.

Store Manager Gentile testified that he expects shift managers at the Boston Store to coach baristas if they do something wrong, and if that is not enough, to have "a more substantial meeting" with them away from customers. He testified that shift managers do not have the authority to independently issue written warnings and had never done so, but that he planned to train them at some point. Shift Manager Ryder testified that Gentile has never mentioned whether shift managers can participate in the disciplinary process and that no shift manager at the Boston Store has ever disciplined a barista.

Cambridge Store Manager Keys testified that shift managers are expected to deliver coaching conversations on performance, time and attendance, and setting expectations, and that they have the ability to issue written corrective actions. Keys also testified that no written warnings had ever been issued without Keys' knowledge and approval, except on one occasion when Keys was away. In that case, a barista has consistently violated the Employer's time-and-attendance policy, and Keys specifically authorized a shift manager to issue the warning. On another occasion, a shift manager observed an infraction and reported it to Keys. Keys reviewed the corrective-action form before the shift manager delivered it to the barista. In a third instance, a corrective-action form listed Keys as the manager issuing the warning; however, Keys could not remember who drafted the form. Shift Manager Simmert testified that she has only ever had informal coaching discussions with baristas. She testified that she had the authority to issue written warnings, but that in her experience, store managers (including Keys) preferred to be present when a written warning was delivered to an employee. Simmert recalled only one instance where another shift manager issued a written warning. In that case, the shift manager had Keys check the corrective action form before delivering it to the barista in the presence of a store-manager trainee. Simmert also testified that on two occasions she recommended sending home employees who could not perform their jobs, and that Keys took her recommendations. However, there is no indication that those incidents constituted disciplinary actions, or that they were recorded in the employees' personnel files.

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<sup>19</sup> Written warnings are also referred to as "corrective actions."

<sup>20</sup> In *Boston II*, a store manager testified that the disciplinary system is generally progressive, but "it depends on the situation."

Method of Elections

While the Employer takes the position that any elections should be held manually, the Employer also takes the position that it would be infeasible to conduct the elections on its premises. Thus, the Employer proposes to hold manual elections at neutral locations.

For the Newtonville Store #7384, the Employer proposes that the election be held at the conference room at the Four Points Sheraton, located at 320 Washington Street, Newton, MA 02458. The hotel is 1.3 miles from the store and has free parking available. The Employer notes that most employees at the Newtonville store commute to work by car and proposes that the election be held on a Thursday from 9:30 a.m. to 11:30 a.m. and from 4:00 p.m. to 6:00 p.m.

For the Boston Store #10599, the Employer proposes that the election be held at the conference room at the Bostonian, located at 26 North Street, Boston, MA 02113. The hotel is .54 miles away from the store and is accessible via public transportation. The Employer proposes that the election be held on a Thursday from 7:30 a.m. to 9:30 a.m. and from 11:30 a.m. to 1:30 p.m.

For the Cambridge Store #8742, the Employer proposes that the election be held at the conference room at the Boston Marriott Cambridge – Kendall Square, located at Two Cambridge Center, Cambridge, MA 02142. The hotel is .11 miles from the store and is accessible via public transportation. The Employer proposes that the election be held on a Wednesday from 7:30 a.m. to 9:30 a.m. and from 3:00 p.m. to 5:00 p.m.

The Petitioner proposes mail ballot elections.

**ANALYSIS**

The Single Facility Presumption

The Act vests in the Board the authority to determine “the unit appropriate for the purposes of collective bargaining.” 29 U.S.C. § 159(b). “It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit.” *Bartlett Collins Co.*, 334 NLRB 484, 484 (2001) (emphasis added). When assessing unit appropriateness, the Board begins by examining the petitioned-for unit; if the Board finds that unit to be appropriate, the inquiry ends. *Id.*

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate. *Haag Drug*, 169 NLRB 877, 877 (1968); *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). A party contesting the appropriateness of a single-facility unit bears the “heavy burden” of rebutting that presumption. *Starbucks Corp. (Mesa I)*, 371 NLRB No. 71, slip op. at 1 (2022). Because the petitioned-for unit need only be an appropriate unit, it is not sufficient to show that other combinations of employees are also appropriate, or even more so. *Foodland of Ravenswood*, 323 NLRB 665, 666 (1997). Rather, the party challenging the presumption “‘must demonstrate

integration so substantial as to negate the separate identity' of the single store unit." *Mesa I*, supra (quoting *Cal. Pac. Med. Ctr.*, 357 NLRB 197, 197 (2011)).

To determine whether the single-facility presumption has been overcome, the Board examines: (1) whether the Employer exercises central control over daily operations and labor relations, and the extent of local autonomy; (2) the similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. *See, e.g., Trane*, 339 NLRB 866, 867 (2003); *J&L Plate, Inc.*, 310 NLRB 429, 429 (1993). The same factors apply in the retail-chain setting. *See, e.g., Red Lobster*, 300 NLRB 908, 912 (1990); *Foodland Of Ravenswood*, supra; *Haag Drug*, 169 NLRB at 877

- Control Over Daily Operations and Labor Relations

An employer's centralized control over multiple facilities weighs against dividing them into single-facility bargaining units. *Trane*, 339 NLRB at 867-68. However, the Board has long recognized that "in retail chain operations, and particularly in food chains," it is common to find "a considerable degree of centralized administration in the functioning of.. stores." *Angeli's Super Valu*, 197 NLRB 85, 85 (1972). And while "chainwide uniformity may be advantageous to the employer administratively, it is not a sufficient reason in itself for denying the right of a separate, homogeneous group of employees, possessing a clear community of interest, to express their wishes concerning collective representation." *Haag Drug*, supra at 878. Accordingly, "the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single facility presumption." *Cal. Pac. Med. Ctr.*, supra at 198.

There is no question that the Employer exercises centralized control over its operations nationwide as well as at the regional and district levels. Witnesses at this hearing and in the incorporated records testified at length about the tools on which the Employer relies to offer customers the same products and quality of service across all of its locations. These include standardized procedures at all levels of operation, from distribution channels, store design, promotions, and marketing, to the placement of individual items in display cases. It is also undeniable that many aspects of day-to-day store operations, including store hours, wages and benefits, training procedures, and even the preparation of food and beverage items, are decided at the district level and above.

However, as noted earlier, "centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations." *Hilander Foods*, 348 NLRB 1200, 1203 (2006). For this aspect of the analysis, "the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." *Id.*; *see also Haag Drug*, supra at 878.



The evidence in this case demonstrates that store managers exercise discretion over many daily operational and labor-relations matters. Store managers are ultimately responsible for hiring, orienting, and training new employees. They select employees for promotions and are usually the first point of contact when employees have a question or concern. The store level is also where work schedules are prepared and time-off requests are approved, under the ultimate authority of the store manager. Those activities contribute to form the core of labor relations, and there is no record evidence that district managers take part in any of them. District managers are simply not present in any individual store with enough frequency to serve as supervisory eyes and ears. *See Red Lobster*, 300 NLRB at 908 fn.4 (finding local autonomy where three area supervisors were each responsible for overseeing four to five restaurants, and even if they were present in restaurants on the managers' days off, "there [was] insufficient staffing for persons in these two positions to be present in all restaurants at all times"); *Renzetti's Mkt., Inc.*, 238 NLRB 174, 175-76 (1978) (emphasizing that a daily supervisor is "better able to comment on the job performance of employees over whom he has constant supervision").

The Board has reached the same conclusion in similar situations. In *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001), the Board found local autonomy where supervisors made assignments, supervised work, scheduled maintenance inspections, imposed discipline, handled initial employee complaints, and scheduled vacations. Likewise, in *Eschenbach-Boysa Co.*, 268 NLRB 550, 551 (1984), the Board found local autonomy where store managers conducted interviews, hired employees, granted time off, and resolved employee problems and complaints, and noted that even though a senior manager "reserves for himself many management prerogatives, he necessarily must leave many of the day-to-day decisions . . . to his managers." In *Foodland of Ravenswood*, 323 NLRB at 667, the Board found that a store manager's authority "to hire part-time employees, to schedule and assign employees, to approve overtime, to grant time off, to impose and recommend discipline, to evaluate employees and recommend their promotion, and to resolve and handle formal and informal employee grievances, constitutes significant evidence of local authority over employees' status such that centralized control over other matters does not overcome the appropriateness of a single-store unit." And in *Renzetti's Market*, *supra* at 174, the Board found merit to the petitioner's contention that such factors as centralized administrative control, uniform fringe benefits, and interdependence of stores operations were outweighed by the "factor which is of chief concern to the employees," namely, control over day-to-day working conditions, including discipline, scheduling, requests for leave, and handling routine grievances.<sup>21</sup>

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<sup>21</sup> *See also Bud's Thrift-T-Wise*, 236 NLRB 1203, 1204 (1978) (finding that, though central labor policies circumscribed authority, store managers exercised autonomy in interviewing, scheduling, granting time-off, adjusting grievances, evaluating employees, and making effective recommendations for hiring, discipline, and firing); *Lipman's*, 227 NLRB 1436, 1437 (1977) (finding that local autonomy outweighs centralized control where the employer's personnel director "makes final decisions as to discipline, schedules vacations, arranges for transfers, and handles grievances[, but] the store manager evaluates and reprimands employees and the personnel clerical interviews, hires, schedules employee shifts, vacations, and overtime, and adjusts grievances."); *Walgreen Co.*, 198 NLRB 1138, 1138 (1972) (finding significant local autonomy where district managers visited stores about one a month, and store-level managers hired

I find that, notwithstanding the existence of centralized policies and procedures, store managers are vested with significant autonomy in handling a range of operational and labor-relations matters.<sup>22</sup> I note that this finding is consistent with the Board's determination in *Mesa I*, 371 NLRB No. 71, slip op. at 2 ("Although the Employer maintains nationwide tools and policies, it is the Store Managers who implement these tools and policies at the local level, and make adjustments as needed in real time.").

- Employee Skills, Functions, and Working Conditions

Employee wages and benefits are virtually identical throughout District 750, as they are across the Employer's 9000 nationwide locations. Employee skills, functions, and working conditions are also virtually identical in District 750 and around the country. There are, however, some differences in working conditions between stores due to differences in sizes, locations, and clientele.

The Board has long held that while the standardization of centrally established benefits is of some significance, it should not overshadow other important factors where the uniformity is not greater than is characteristic of retail chain store operations generally, *Haag Drug*, *supra*.

Although few differences in job functions and working conditions exist within District 750, I give minimal weight to the significance of the Employer's standardized wages, benefits, and skills that are to be expected in a national retail chain.

- Employee Interchange

It is undisputed that all interchange in the instant matter is voluntary. The Board has held that voluntary interchange should be afforded less weight in rebutting the single-facility presumption, *New Britain Transp. Co.*, 330 NLRB 397, 398 (1999) ("[V]oluntary interchange is given less weight in determining if employees from different locations share a common identity."); *Red Lobster*, 300 NLRB 908 (1990) (noting that "the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary").

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most unit employees); *Haag Drug*, 169 NLRB at 879-80 (finding single-store unit appropriate where store manager hired and fired employees, rated their performance, and handled routine grievances).

<sup>22</sup> I find the cases on which the Employer relies to argue that this factor weighs in favor of a multi-facility unit distinguishable. See *Super X Drugs of Ill., Inc.*, 233 NLRB 1114, 1114-15 (1977) (district manager made hiring decisions, approved all leaves of absence and promotions, determined the number of employees at each position in every store, their hours of work, and how many hours they worked in each position; store managers were required to obtain district manager's authorization to reprimand or terminate employees; store operations provided for telephone conversations with district manager for "any problems arising at the store level"); *Kirlin's Inc. of Cent. Ill.*, 227 NLRB 1220, 1221 (1977) (upper-level management handled scheduling, hiring, and firing, and authorized overtime); *Malco Theatres, Inc.*, 222 NLRB 81, 82 (1976) (high degree of interchange and district-management visits as often as four times per week).

The data in the record reveals that the hours worked by borrowed baristas at any of the petitioned-for stores amounted to only a small percentage of total hours worked. Such minimal numbers are not sufficient to demonstrate that a single facility's homogeneity of employees has been destroyed or to rebut the single-facility presumption.

Accordingly, I find that the level of employee interchange supports the petitioned-for single-facility units. While the Employer has established that a majority of employees based at the Boston Store worked at least one shift at another store between April 2019 and February 2022, this is not evidence of regular interchange sufficient to rebut the single-facility presumption, especially because the data provided by the Employer indicate that the petitioned-for store "borrows" only a very small percentage of its labor from other stores. In order for employee interchange to overcome the single-facility presumption, it must be "substantial" and "destructive of homogeneity" in a petitioned-for unit, *Haag Drug Co.*, 169 NLRB 877 (1968). See also *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001) (13-14 interchanges between two facilities employing a combined 23 employees in an 8-month period not sufficient to rebut single facility presumption).

- Distance Between Locations

The stores in District 750 range from a tenth of a mile to two miles apart, with seven stores located less than a mile from the Boston Store.

The Board has found single-facility units to be appropriate in cases where geographic proximity is similar to that in District 750. In *Lipman's*, 227 NLRB at fn.7 (1977), the Board found that stores located two miles apart were appropriate single-facility units; in *Red Lobster*, 300 NLRB at 908, 912, the Board found that stores an average distance of seven miles apart and all within a 22-mile radius were appropriate single-facility units. I find that the same conclusion is warranted here. I further find that the close proximity of the District 750 stores is insufficient to offset the other factors which must be considered by the Board's single facility test.

- Bargaining History

The lack of bargaining history at any store in District 750 weighs in favor of the petitioned-for unit. See *Lipman's*, 227 NLRB 1436, 1438 (1977) ("[T]he fact that there is no bargaining history for any of these employees, and the fact that no labor organization seeks to represent the employees on a broader basis" supports finding appropriate single-facility unit).

- Related Cases

At issue here are three of over 200 petitions filed in recent months by Workers United for a Starbucks single-store unit. Seventeen Regional Directors have issued 37 decisions and directions of elections. In each instance, the Regional Director has ordered election(s) in the petitioned-for single store unit(s). The Board has repeatedly denied review of these decisions.

For example, in *Starbucks Corporation* 371 NLRB No. 71 (February 23, 2022), the Board reaffirmed that a petitioned-for single store unit is presumptively appropriate and agreed with the Regional Director in finding that several factors under the Board’s single-facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—were not sufficient to rebut the single-facility presumption in the context of the Board’s multi-factor analysis where store managers exercised significant autonomy over certain personnel matters in the day-to-day operation of individual stores.<sup>23</sup>

- Conclusion

Based upon the record and in accordance with the discussion above, I find that the Petitioner’s petitioned-for unit limited to the Boston Store is appropriate. I further find that, as in *Starbucks Corporation*, the similarity of employee skills, functions, and working conditions throughout District 750, and the District 750 stores’ geographic proximity are not sufficient to rebut the single-facility presumption given the lack of centralized control and employee interchange.

Supervisory Status of Shift Managers

Section 2(11) of the Act defines the term “supervisor” as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. § 152(11). These powers are listed in the disjunctive, so possession of any one is enough to make an individual a supervisor, as long as its exercise involves independent judgment. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006). Independent judgment requires that an individual “act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Id.* at 693. “[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.* Additionally, the act in question must involve “a degree of discretion that rises above the routine or clerical.” *Id.* (quotation marks and citations omitted). For example, a decision that is “obvious and self-evident” is routine and clerical in nature, even if it involves independent judgment. *Id.* Similarly, the fact that a putative supervisor is “in charge” during a period of time

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<sup>23</sup> With respect to the factor of interchange, the Board held that the degree of interchange present did not favor rebutting the single-store presumption because it did not negate the separate community of interest the employees of an individual store are presumed to share.

will not establish supervisory authority absent some evidence that the individual's actions during that time require independent judgment. *Dean & Deluca N.Y., Inc.*, 338 NLRB 1046, 1047 (2003).

The party asserting supervisory status bears the burden of demonstrating it by a preponderance of the evidence. *NLRB v. Ky. River Cmty. Care*, 532 U.S. 706, 711-12 (2001). Conflicting or inconclusive evidence is insufficient to support finding supervisory status. *N.Y. Univ. Med. Ctr.*, 324 NLRB 887, 908 (1997), *enfd.* in relevant part, 156 F.3d 405 (2d Cir. 1998). Rather, a party must support its claim with specific evidence of an employee's actual responsibilities, and not just conclusory or generalized testimony. *Lynwood Manor*, 350 NLRB 489, 490-91 (2007). Lack of evidence is construed against the party asserting supervisory status. *Dean & Deluca*, *supra* at 1048.

Supervisory status is determined by an individual's duties, not by job classification or title. *New Fern Restorium Co.*, 175 NLRB 871 (1969). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence is to remove individuals from the protection of the Act. *Quadrex Envtl. Co.*, 308 NLRB 101, 102 (1992).

The Employer argues that shift managers are statutory supervisors because they assign work and responsibly direct other employees, adjust grievances, and effectively recommend hiring, promoting, and disciplining other employees.<sup>24</sup>

- Shift Managers' Role in Adjusting Grievances

The Employer argues that shift managers adjust grievances when, while acting as Play Caller, they move baristas to new positions. In addition, the Employer argues that shift managers adjust grievances when they correct errors in the Employer's payroll system.

In order to establish the statutory authority to adjust grievances, a party must show disputed individuals have authority to actually adjust grievances, not merely minor disputes (such as complaints regarding workload or lunch and break schedule conflicts). *Ken-Crest Services*, 335 NLRB 777, 779 (2001); *Illinois Veterans Home at Anna, L.P.*, 323 NLRB 890, 891 (1997) (noting absence of evidence putative supervisors performed any role in formal grievance procedure); *Riverchase Health Care Center*, 304 NLRB 861, 865 (1991); *Ohio Masonic Home*, 295 NLRB 390, 394 (1989); *Hudson Waterways Corp.*, 193 NLRB 378, 380 (1971).

I find that the role of shift managers at issue here in resolving minor problems is essentially clerical, and that the Employer has not met its burden of establishing that shift managers have the authority to resolve employees' grievances.

- Shift Managers' Role in Promotion

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<sup>24</sup> No party takes the position that shift supervisors possess the authority to transfer, suspend, lay off, recall, discharge, or reward other employees, or to effectively recommend such action.

The Employer asserts that shift managers effectively recommend baristas for promotion. However, the record reveals no evidence of shift managers having a role in promotion at any of the three petitioned-for stores. I conclude that the Employer has not met its burden of establishing that shift managers have the authority to promote other employees.

- Shift Managers' Role in Assignment and Responsible Direction

As construed by the Board, the term “assign” refers to “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare*, 348 NLRB at 689. In this context, the terms “place,” “time,” and “work” are construed broadly, as part of the employee’s “terms and conditions of employment.” *Id.* Attributing employees to a particular department or shift meets the Board’s definition of “assign,” so long as it requires independent judgment. *Id.*

Responsible direction exists when a person has “men under him” and decides “what job shall be undertaken next or who shall do it,” but only “provided that the direction is both ‘responsible’ . . . and carried out with independent judgment.” *Id.* at 691 (other quotation marks and citation omitted). Direction is “responsible” if “the person directing and performing the oversight . . . [is held] accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *Id.* at 691-92.

There is no dispute that shift managers assigned to the S&S bucket are responsible for preparing the weekly work schedule. However, the evidence shows plainly that the degree of independent judgment involved in producing the schedule is attenuated. First, a significant portion of the work is done by the Employer’s scheduling tools. The remaining task of matching employees to shifts based on their availability does not require independent judgment as defined by *Oakwood Healthcare*. Second, the Employer restricts the shift managers’ autonomy by requiring them to match the Partner Hours forecasts as closely as possible, without deviating from their store’s labor budget by more than 2 percent. As Boston Store Manager Gentile attested, “[W]hen you’re talking about less than 100 hours [of store operations per week], that’s less than 2 hours of wiggle room.” The Board has found that, when performed “within the confines of the Employer’s narrowly drawn guidelines,” scheduling is a clerical function. *Sav-on Drugs, Inc.*, 243 NLRB 859, 861 (1979). That is certainly the case here. Moreover, the record reflects that two store managers always review schedules before posting, even when they are prepared by Advising-level S&S shift managers.

Shift managers who are at the Advising level in the T&T bucket are responsible for drafting training plans, identifying and training barista trainers, designating trainers and scheduling trainings based on employee availability, and performing skill checks on new baristas. The Board has long held that coaching and training employees is not a supervisory function. *See Sears, Roebuck & Co.*, 292 NLRB 753, 754 (1989) (senior experienced employee who instructs new workers is not a supervisor); *F.A. Bartlett Tree Expert Co.*, 325 NLRB 243, 243 fn. 1 (1997) (crew

foremen who provide on-the-job training are not supervisors). Moreover, I note that at the time of the hearing, the only Advising-level T&T shift manager in the petitioned-for stores was assigned to a different bucket.

In their role as Play Callers, shift managers deploy other employees to designated positions on the retail floor. The Employer argues that play calling is supervisory work because shift managers use independent judgment to assign employees to workstations based on their skills. This contrasts with testimony by employer witnesses in other proceedings, who stated that Play Callers are expected to follow the Employer's Play Builder tool for that task. Two shift managers testified that they usually have employees work at the stations where they are the strongest during peak times, then rotate them to other stations. They also testified that they occasionally use Play Builder, but as one of them explained, the work is repetitive and employees usually work the same shifts, so they have developed consistent ways of doing things. I note that all employees have the same skill set and are trained to work at every position. Indeed, Play Builder treats employees as fungible assets who can be assigned to any station without regard for factors such as skill, personality conflicts, or facility in certain situations, which suggests that those types of considerations are not essential to store operations. There is no basis to find that assigning employees to workstations requires supervisory-type independent judgment if a computer can do it automatically. It also appears that many assignments are made to equalize workloads or prevent burnout from working too long at one station. Making assignments for the purpose of equalizing workloads or alleviating fatigue does not implicate the kind of independent judgment necessary to find supervisory status. *See Oakwood Healthcare*, 348 NLRB at 693.

Play Callers are responsible for making sure that employees take breaks on schedule and in accordance with applicable laws. The only shift manager to testify about scheduling breaks stated that she usually follows the Partner Hours tool, which automatically inserts breaks every two hours. Shift managers will adjust break times during the day if the store is too busy to spare an employee. The Board has found that the assignment of breaks and lunch periods is routine and does not require independent judgment of a supervisory nature. *Springfield Terrace Ltd.*, 355 NLRB 937, 942 (2010); *L.A. Water & Power*, 340 NLRB at 1234.

Play Callers can also offer employees to leave early or stay late depending on store needs. However, the decision to leave early or stay late is entirely voluntary, and employees are free to refuse. It is well established that proving supervisory authority requires showing that the putative supervisor has "the ability to require that a certain action be taken, [not] merely to *request* that a certain action be taken." *Golden Crest Healthcare Ctr.*, 348 NLRB 727, 729 (2006).

Shift managers direct other employees to perform discrete tasks such as cleaning duties (mopping the lobby after each peak, cleaning hot and cold bars, ovens, floor mats and bathrooms), taking out the trash, completing inventory, restocking supplies, or remedying problems uncovered during food-safety audits. Those types of "ad hoc instructions" are not sufficient to establish that a putative supervisor has the authority to "assign" under the Act. *Oakwood Healthcare*, 348 NLRB at 689.

The Employer contends that shift managers are supervisors by virtue of their ability to turn off the MOP system if the store is understaffed or overwhelmed. Disabling the MOP is essentially a workload-adjustment mechanism, which allows shift managers to reduce demand when it exceeds the store's production capacity. Adjusting employee workloads does not involve the exercise of supervisory-level independent judgment. *See Oakwood Healthcare*, supra at 693.

The Employer argues that even if these responsibilities do not meet the standard needed to find authority to "assign" under the Act, shift managers are still supervisors because they responsibly direct other employees in the performance of their daily work. However, there is no evidence that shift managers are, or have ever been, held accountable for the actions of other employees.

Finally, the Employer asserts that shift managers are statutory supervisors because they are the highest authority in the store during shifts when the store manager is absent. In *Aladdin Hotel*, 270 NLRB 838, 840 (1984), the Board explained that "the appropriate test for determining the status of employees who substitute for supervisors is whether the part-time supervisors spend a regular and substantial portion of their working time performing supervisory tasks or whether such substitution is merely sporadic and insignificant." Thus, an employee who regularly spends 25 percent of their working hours substituting for their supervisor, and who possesses full supervisory authority during that time, is a supervisor under the Act. *Id.* (citing *Honda of San Diego*, 254 NLRB 1248, 1250-51 (1981)). On the other hand, employees who replace a supervisor during 40 percent of their workweek without any supervisory authority are not statutory supervisors. *Id.* (citing *Doctors' Hosp. of Modesto, Inc.*, 183 NLRB 950, 951-52 (1970)).

The record reveals no evidence that shift managers' job functions and responsibilities are any different when store managers are present than when they are not. Thus, even if some shift managers may spend a significant amount of time overseeing store operations without a store manager present, that is insufficient to support a finding of supervisory status. *See, e.g., Fall River Sav. Bank v. NLRB*, 649 F.2d 50, 53-55 (1st Cir. 1981) (finding that assistant bank managers who received higher pay, held branch keys, approved check cashing, assigned cashiers to windows, directed employees to perform tasks, and were at times the highest-ranking branch employees were not statutory supervisors); *C&W Super Mkts., Inc.*, 231 NLRB 403 (1977) (employees who had store keys, performed bank transactions for the store, served as night managers and had the ability, at those times, to assign tasks, let employees leave early, and temporarily suspend employees were not statutory supervisors), *enfd.* 581 F.2d 618, 622 (7th Cir. 1978).<sup>25</sup>

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<sup>25</sup> Shift managers also oversee store operations when a store manager is away on vacation, but in those cases, another store manager is designated as a proxy whom they can contact in case of emergency. The only evidence of enhanced supervisory authority during those periods is that shift managers will finalize schedules without any review. As discussed above, however, their scheduling autonomy is so limited by the Employer's rules and guidelines that it does not require *Oakwood*-style independent judgment. Moreover, and in any event, the Board has consistently found that "the sporadic assumption of supervisory duties, e.g., during annual vacation periods of a regular supervisor, is not sufficient to establish supervisory status at other times." *Latas De Aluminio Reynolds*, 276 NLRB 1313, 1313 (1985) (quoting *Stewart & Stevenson Servs., Inc.*, 164 NLRB 741, 742 (1967), *enfd.* in relevant part, 414 F.2d 232 (5th Cir. 1969)).



I conclude that the Employer has not met its burden of establishing that shift managers have the authority to assign work to other employees, or reasonably to direct them.

- Shift Managers' Role in Discipline

The Employer contends that shift managers have the authority to discipline other employees. “To confer [supervisory] status, the exercise of disciplinary authority must lead to personnel action, without the independent investigation or review of other management personnel.” *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002); *Beverly Health & Rehab. Servs., Inc.*, 335 NLRB 635, 669 (2001), *enfd.* in relevant part, 317 F.3d 316 (D.C. Cir. 2003), overruled on other grounds, *Raytheon Network Centric Sys.*, 365 NLRB No. 161, slip op. at 16 (2017). The three shift managers who testified stated that they have never issued formal written discipline to other employees.

The Employer points to a statement in the *Shift Manager Approach* to the effect that shift managers can use corrective action when necessary. It is well settled “paper authority,” such as job descriptions, job titles, employee handbooks, and similar items does not, without more, demonstrate actual supervisory authority. *Chi Lake-Wood Health*, 365 NLRB No. 10, slip op. at 1 fn. 1 (2016); *Oakwood Healthcare*, 348 NLRB at 690 fn. 24.

The Employer has shown that shift managers issue in-the-moment verbal coachings to baristas. However, there is no dispute that such coachings are not disciplinary acts under the Employer’s policy. Furthermore, the authority to “point out and correct deficiencies in the job performance of other employees does not establish the authority to discipline.” *Franklin Hosp. Med. Ctr.*, 337 NLRB 826, 830 (2002); *see also, e.g., Vencor Hospital-Los Angeles.*, 328 NLRB 1136, 1139 (1999).

Newtonville Store Manager Rixe and Shift Manager Pricer testified that shift managers have the authority to issue corrective actions, but this has never occurred. Conclusory statements about an employee’s disciplinary authority are insufficient to establish supervisory status. Rather, the Board requires evidence of actual supervisory authority visibly translated into tangible examples demonstrating its existence. *See Golden Crest*, 348 NLRB at 731. Neither Rixe nor Pricer offered any such example.

Boston Store Manager Gentile testified that shift managers do not have the authority to independently issue formal written discipline, but mentioned vague plans to train them in the future.

Cambridge Store Manager Keys testified that shift managers have never issued written warnings without Keys’ prior knowledge and approval, and provided examples reflecting that pattern. Shift Manager Simmert testified that on the sole occasion when she witnessed a shift manager deliver a corrective action, Keys checked the form beforehand. Such examples are insufficient, on their own, to confer supervisory status. To the contrary, the evidence strongly

suggests that Keys is always apprised of the situation and reviews corrective-action forms prior to their issuance, which precludes finding supervisory authority. *See, e.g., Green Acres Country Care Ctr.*, 327 NLRB 257, 260 (1998) (no supervisory authority where putative supervisor could not issue written warnings without prior manager review); *Phelps Cmty. Med. Ctr.*, 295 NLRB at 492 (talking to supervisor before imposing discipline, even for informational purposes, affords supervisor a chance to review proposed action and approve or countermand it, thus negating independent judgment).

I find that the Employer has failed to adduce sufficient evidence to establish that the shift managers are independently responsible for determining whether or to what extent other employees should be disciplined.

- Shift Managers' Role in Hiring

The shift managers cannot finalize the hire of a new employee because they do not have the necessary access within the Employer's computer system. However, the Employer submits that shift managers have the authority to effectively recommend the hire of new employees. A hiring recommendation is "effective" where the Employer relies upon the recommendation without further inquiries.

The record reveals that shift managers' hiring responsibilities vary from store to store. At the Cambridge Store and the Boston Store, shift managers participate in interviews alongside store managers, assistant store managers or store manager trainees.<sup>26</sup> The Board has long held that mere participation in the interview process does not confer supervisory status, where others who are admitted supervisors also participate and thus independently investigate the suitability of the candidates. *J.C. Penney Corp.* 347 NLRB 127, 129 (2006); *Los Angeles Water and Power Employees' Association* 340 NLRB 1232, 1233, 1234-1235 (2003); *Ryder Truck Rental, Inc.* 326 NLRB 1386, 1387-1388 fn. 9 (1998); *California Beverage Co.* 283 NLRB 328, 329 (1987).

With respect to the Newtonville Store, Store Manager Rixe testified that Shift Manager Pricer conducts most interviews and that eight to ten current store employees were hired on Pricer's recommendation without further review by Rixe. Pricer likewise testified that Rixe likes to be "kept in the loop," but that Rixe has always accepted Pricer's recommendations. Pricer and Rixe

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<sup>26</sup> Cambridge Store Manager Keys testified that Shift Manager Wolff was formerly responsible for hiring at a different store and that at least five employees recommended by Wolff were hired without further review. However, Wolff has not taken part in hiring at the Cambridge Store and the record reveals no specific examples of employees hired by Wolff at the other store. Because the responsibilities of shift managers vary so greatly from store to store, I cannot rely on the evidence that Wolff may have hired employees at a location not at issue here. In addition, the record is devoid of specific evidence with respect to the employees Wolff may have hired. The Board has long recognized that purely conclusory evidence is not sufficient to establish supervisory status. *Golden Crest Healthcare Center*, supra; *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991).

are longtime colleagues; thus, according to Rixe, Pricer knows what qualities Rixe seeks in a new employee without specific consultation.

I find that the Employer has not carried its burden of establishing that shift managers have the authority to effectively recommend hiring at the Boston Store or the Cambridge Store. In contrast, I find that the Employer has met its burden of establishing that shift managers at the Newtonville Store can and do effectively recommend hiring and must be excluded from any collective-bargaining unit on that ground.

- Conclusion

I find that the shift managers at the Boston Store and the Cambridge Store are not statutory supervisors and should be included in those units.

In concluding that the Employer has failed to meet its burden of showing that Boston Store and Cambridge Store shift managers are supervisors, I acknowledge that shift managers possess some secondary indicia of supervisory status. Shift managers are compensated at a higher rate of pay than baristas and have recently been added to a management-level incentive plan. They also attend meetings with store managers, have access to software systems and tools not granted to baristas, have email addresses, and are often the highest-ranking employees in the store. The Board has long held, however, that secondary indicia are insufficient by themselves to establish supervisory status when there is no evidence that an individual possesses any one of the primary Section 2(11) indicia. *See Golden Crest*, 348 NLRB at 730 fn. 10; *Ken-Crest Servs.*, 335 NLRB 777, 779 (2001).

With respect to the Newtonville Store, I rely on shift managers' authority to effectively recommend the hire of new employees to find that they are statutory supervisors. Accordingly, shift managers should be excluded from the Newtonville Store unit.

Method of Elections

In response to the evolving realities of the pandemic, the Office of the General Counsel issued Memorandum GC 20-10 on July 6, 2020. The suggested protocols include: polling times sufficient to accommodate social distancing without unnecessarily elongating exposure among Board Agents and observers; the employer's certification in writing that polling area is consistently cleaned in conformity with CDC standards; a spacious polling area, sufficient to accommodate six-foot distancing; separate entrances and exits for voters; separate tables spaced six feet apart; sufficient disposable pencils without erasers for each voter to mark their ballot; glue sticks or tape to seal challenge ballot envelopes; plexiglass barriers of sufficient size to protect the observers and Board Agent; and provision of masks, hand sanitizer, gloves and disinfecting wipes. The Employer asserts that it is willing to comply with all protocols as necessary.

Memorandum GC 20-10 also requests an employer's written certification of how many individuals have been present in the facility within the preceding 14 days who have tested positive

for Covid-19; who have been directed by a medical professional to proceed as if they have tested positive for Covid-19; who are awaiting results of a Covid-19 test; who are exhibiting symptoms of Covid-19; or who have had direct contact with anyone in the previous 14 days who has tested positive for Covid-19.

The Board offered further guidance regarding the direction of manual elections during the Covid-19 pandemic in *Aspirus Keweenaw*, 370 NLRB No. 45 (November 9, 2020). In *Aspirus Keweenaw*, the Board set forth six situations under which a Regional Director should consider directing a mail-ballot election. While *Aspirus Keweenaw* does not require a Regional Director to direct a mail ballot election where one or more of the six factors are present, the Board stated that Regional Directors who direct mail-ballot elections under those circumstances will not be found to have abused their discretion.

The six situations are:

- 1) The Agency office tasked with conducting the election is operating under “mandatory telework” status;
- 2) Either the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
- 3) The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
- 4) The employer fails or refuses to commit to abide by the GC Memo 20-10 protocols;
- 5) There is a current Covid-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and
- 6) Other similarly compelling considerations.

As the Board acknowledged, no Regional Office, including Subregional and Resident Offices, has been in a mandatory-telework status since mid-June 2020. The Employer’s proposed polling place does not appear to violate any mandatory state or local health orders, and the Employer is willing to comply with GC Memo 20-10 to the extent possible.<sup>27</sup>

The Boston Store is located in Suffolk County, while the Cambridge Store and the Newtonville Store are located in Middlesex County. According to the Centers for Disease Control,

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<sup>27</sup> Because the Employer does not control the hotels it has proposed as election sites, the Employer cannot certify the Covid status of individuals present at those locations.

the testing positivity rate for Middlesex County was 8.93 percent as of May 16, the most recent date for which data was available.<sup>28</sup> Meanwhile, the testing positivity rate for Suffolk County was 7.87 percent.<sup>29</sup>

The 14-day trend in the number of new confirmed Covid-19 cases in Middlesex County is rising according to the Johns Hopkins Covid-19 status report.<sup>30</sup> As of May 20, Johns Hopkins University's website showed the following number of new cases in Middlesex County for each day for the preceding fourteen days:

<b>Date</b>	<b>Number of New Cases</b>	<b>Change</b>
May 19	1171	95
May 18	1076	200
May 17	876	-2513
May 16	3389	3389
May 15	0	0
May 14	0	-1152
May 13	1152	-285
May 12	1437	374
May 11	1063	429
May 10	634	-1726
May 9	2360	2360
May 8	0	0
May 7	0	-993
May 6	993	N/A

In averaging the change in the number of new daily cases, the number of new daily cases rose at an average rate of 13.69 cases per day in Middlesex County.

Likewise, 14-day trend in the number of new confirmed Covid-19 cases in Suffolk County is rising according to the Johns Hopkins Covid-19 status report.<sup>31</sup> As of May 20, Johns Hopkins

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<sup>28</sup> See [https://covid.cdc.gov/covid-data-tracker/#county-view?list\\_select\\_state=Massachusetts&data-type=CommunityLevels&list\\_select\\_county=25017](https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Massachusetts&data-type=CommunityLevels&list_select_county=25017) (last visited May 20, 2022).

<sup>29</sup> See [https://covid.cdc.gov/covid-data-tracker/#county-view?list\\_select\\_state=Massachusetts&data-type=CommunityLevels&list\\_select\\_county=25025&null=CommunityLevels](https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Massachusetts&data-type=CommunityLevels&list_select_county=25025&null=CommunityLevels) (last visited May 20, 2022).

<sup>30</sup> See <https://bao.arcgis.com/covid-19/jhu/county/25017.html> (last visited May 20, 2022).

<sup>31</sup> See <https://bao.arcgis.com/covid-19/jhu/county/25025.html> (last visited May 20, 2022).

Starbucks Corporation  
Cases 01-RC-290847  
01-RC-290850  
01-RC-290851

University's website showed the following number of new cases in Suffolk County for each day for the preceding fourteen days:

Date	Number of New Cases	Change
May 19	722	214
May 18	508	127
May 17	381	-745
May 16	1126	1126
May 15	0	0
May 14	0	-598
May 13	598	-129
May 12	727	192
May 11	532	99
May 10	433	-601
May 9	1034	1034
May 8	0	0
May 7	0	-621
May 6	621	N/A

In averaging the change in the number of new daily cases, the number of new daily cases rose at an average rate of 7.54 cases per day in Suffolk County.

Accordingly, because the positivity rates in Suffolk County and Middlesex County remain above the 5 percent threshold contemplated by *Aspirus Keweenaw*, and because case numbers continue to rise, I will direct mail ballot elections.

### **DIRECTION OF ELECTIONS**

The following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

In Case 01-RC-290847:

All full-time and regular part-time baristas performing work at the Employer's store #7384 located at 16-18 Austin St., Newtonville, MA 02460, excluding all store managers, shift managers, office clericals, guards, and supervisors as defined in the Act.

In Case 01-RC-290850:

Starbucks Corporation  
Cases 01-RC-290847  
01-RC-290850  
01-RC-290851

All full-time and regular part-time baristas and shift managers performing work at the Employer's store #10599 located at 125 Summer St., Boston, MA 02111, excluding all store managers, office clericals, guards, and supervisors as defined in the Act.

In Case 01-RC-290851:

All full-time and regular part-time baristas and shift managers performing work at the Employer's store #8742 located at 120 Broadway, Cambridge, MA 02142, excluding all store managers, office clericals, guards, and supervisors as defined in the Act.

No determination has been made concerning the eligibility of the Assistant Store Managers, as such the employees in this classification, if any, are allowed to vote subject to challenge, with a decision on the eligibility of these individuals to be resolved in a post-election proceeding, if necessary.

The National Labor Relations Board will conduct secret ballot elections among the employees in the units found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by WORKERS UNITED.

#### **A. Election Details**

All three elections will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining units. On Tuesday, June 7, 2022, ballots will be mailed to voters by National Labor Relations Board, Subregion 34. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Subregion 34 office by close of business on Wednesday, June 29, 2022.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Wednesday, June 15, 2022, should communicate immediately with the National Labor Relations Board by either calling the Subregion 34 Office at (860)240-3522 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

I further direct that the ballot count will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) to be determined by the Regional Director, beginning at 2 PM on Thursday, June 30, 2022. Each party will be allowed to have observers attend the virtual ballot count.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during

that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter Lists**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision lists of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters in each of the units.

To be timely filed and served, the lists must be *received* by the Regional Director and the parties by **May 26, 2022**. The lists must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter lists.**

Unless the Employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the lists must begin with each employee's last name and the lists must be alphabetized (overall or by department) by last name. Because the lists will be used during the election, the font size of the lists must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).



Starbucks Corporation  
Cases 01-RC-290847  
01-RC-290850  
01-RC-290851

Pursuant to Section 102.5 of the Board's Rules and Regulations, the lists must be filed electronically by submitting (E-Filing) it through the Agency's website ([www.nlr.gov](http://www.nlr.gov)), unless the Employer provides a written statement explaining why electronic submission is not possible or feasible. The Employer must also electronically serve the lists on the other parties. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the **NLRB case number**, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the lists is on the sending party.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the lists within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voters list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. **The Employer must post copies, and distribute the Notice by 12:01 a.m. on June 2, 2022**, and copies must remain posted until the end of the election. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

#### **RIGHT TO REQUEST REVIEW**


Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Starbucks Corporation  
Cases 01-RC-290847  
01-RC-290850  
01-RC-290851

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: May 24, 2022



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Laura A. Sacks, Regional Director  
National Labor Relations Board  
Region 01

Enclosures